

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2005-000818-001 DT

02/07/2006

HONORABLE DAVID R. COLE

CLERK OF THE COURT  
I. Huerta  
Deputy

FILED: 02/09/2006

TAMERA SERRANO

JAMES LEE PAK

v.

RAY WEIN (001)  
ELLEN WEIN (001)

MICHAEL JOHN HRNICEK

MCDOWELL MOUNTAIN JUSTICE  
COURT  
REMAND DESK-LCA-CCC

RECORD APPEAL RULE/REMAND

LOWER COURT CASE NUMBER: CV04-09432RH

On November 16, 2004, plaintiff/appellee ("appellee") filed a Complaint against defendants/appellants ("appellants"). Appellants filed their Answer on January 6, 2005. On or about February 15, 2005, the trial court notified counsel for both parties that a settlement conference was scheduled for March 18, 2005. Apparently, although appellants' counsel was aware that he had a conflict on March 18, he did not move to continue the settlement conference. Because neither appellant nor appellants' counsel appeared for the settlement conference, the trial court entered judgment in favor of appellee. On April 11, 2005, appellants moved to set aside the judgment. The trial court denied the motion. Appellants filed a Notice of Appeal.<sup>i</sup> The Court has reviewed the entire file including the appellate memoranda.

Appellants raise two claims: (1) the trial court erred when it entered judgment by default and when it denied appellants' request to set aside the judgment, and (2) assuming that it was proper to enter a default judgment, the court should not have entered judgment in the maximum allowable amount. Appellee urges that (1) the court acted properly in entering judgment by default, (2) the court correctly denied the motion to set aside the judgment, and (3) it was not error to enter judgment in the maximum amount permitted by law.

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The Court has reviewed numerous Arizona cases that bear on the issues presented. Several principles can be distilled from the wealth of case law. First, although the law favors resolution of legal disputes on the merits, any of a wide range of circumstances can justify entry of judgment by default.<sup>ii</sup> Second, “excusable neglect,” as that term is used in Rule 60(c)(1), Ariz.R.Civ.P., must mean more than mere carelessness; the standard against which the actor’s conduct must be measured is how a reasonable person would have acted in similar circumstances. Third, because trial courts are in a better position than appellate courts to resolve questions such as whether “excusable neglect” exists, they are invested with considerable discretion. Consequently, to succeed on appeal, the challenging party must establish that the trial court abused its discretion in granting or denying a motion to set aside judgment.

Based on its review of the case law, the Court concludes that the trial court did not abuse its discretion when it rejected appellants’ claim that counsel’s failure to request a continuance of the settlement conference constituted excusable neglect.<sup>iii</sup> Furthermore, the Court perceives no abuse of discretion in the trial court’s implicit rejection of appellants’ claim that, because the parties were “actively litigating” the matter, equitable considerations militate in favor of an order setting aside the judgment.<sup>iv</sup>

The second issue is whether the trial court abused its discretion in entering judgment in the amount of \$10,000.00 which, according to the parties, is the maximum amount the court could have awarded given the jurisdictional limit.<sup>v</sup> In *Hilgeman v. American Mortg. Securities*, 196 Ariz. 215, 994 P.2d 1030 (App. 2000), the court of appeals addressed a situation in which the trial court entered a default judgment specifying both actual and punitive damages. The court held that, while it was compelled to presume that the evidence supported the actual damages reflected in the judgment, it would indulge no such presumption in connection with the punitive damages. The fact that appellee sought both actual and punitive damages does not warrant application of the *Hilgeman* rationale to the instant case. The Court is not at liberty to assume, much less presume, that some unspecified (and perhaps unascertainable) percentage or portion of the award constitutes “punitive” damages and reduce the award accordingly.<sup>vi</sup>

Based on the above,

IT IS ORDERED affirming the judgment entered by the trial court.

IT IS FURTHER ORDERED returning this matter to the trial court for such further proceedings as may be appropriate.

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<sup>i</sup> Although it is not clear whether appellants timely filed the Notice, appellee has not urged dismissal of the appeal based on an untimely filing.

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<sup>ii</sup> A related principle is that the law has an interest in finality; some of the cases speak in terms of the weighing process that trial courts must conduct in resolving a request to set aside a judgment (interest in finality vs. interest in resolving disputes on the merits).

<sup>iii</sup> Having so concluded, it is not necessary for the Court to reach the question whether appellants had a meritorious defense to the claims set forth in the Complaint.

<sup>iv</sup> It is by no means clear that filing an Answer and complying with mandatory disclosure requirements constitutes the kind or degree of “active” litigation such as might, under truly extraordinary circumstances, warrant relief pursuant to Rule 60(c). *See Gorman v. City of Phoenix*, 152 Ariz. 179, 731 P.2d 74 (1987), where the court noted that “a desultory exchange of settlement letters” may not go far in terms of establishing that a case was being actively litigated for purposes of a Rule 60(c) analysis. 152 Ariz. at 183, 731 P.2d at 78.

<sup>v</sup> In addition, the trial court awarded appellee costs in the amount of \$111.00.

<sup>vi</sup> That being said, the Court does not necessarily conclude that appellants are left without a remedy under circumstances where it is not clear what a “just” amount of damages might have been. However, it is clear from the case law that the appellate court is not the place to seek such a remedy.